

## RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement with DAVITA LOMA VISTA DIALYSIS to provide One (1) Four Cubic Yard Dumpster for a service fee of \$15.00 for each month for the purpose of collecting the company's recyclable materials in conjunction with the Department of Solid Waste Management's recycling program.

**ADOPTED this 27th day of April, 2004.**

CITY OF EL PASO

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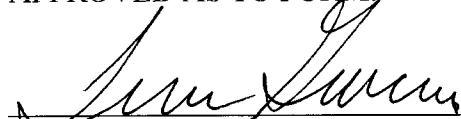
Joe Wardy  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:



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Teresa Garcia  
Assistant City Attorney

STATE OF TEXAS            )  
                                      )  
COUNTY OF EL PASO        )

**AGREEMENT**

THIS AGREEMENT, made and entered into this 27th day of April, 2004, by the CITY OF EL PASO, hereinafter called the "City," and DAVITA LOMA VISTA DIALYSIS

WITNESSETH:

**WHEREAS**, recent changes in federal and state regulations pertaining to the operation of landfills receiving municipal solid waste for disposal have made it much more costly to operate such landfills, and

**WHEREAS**, diverting recyclable materials from landfills to recycling programs helps increase the life of existing landfills and generally is good for the environment, and

**WHEREAS**, the City only collects recyclable materials which it can sell,

**NOW, THEREFORE**, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. The City agrees to lease DAVITA LOMA VISTA DIALYSIS One (1) 4 Cubic Yard Dumpster (Equipment), to be placed by DAVITA LOMA VISTA DIALYSIS at its facilities. Nothing herein shall require the City to purchase additional containers to comply with the terms of this Agreement. DAVITA LOMA VISTA DIALYSIS agrees to pay a Service Fee of \$15.00 per month for the Equipment.

2. The City agrees to collect all recyclable material deposited by DAVITA LOMA VISTA DIALYSIS's employees. The City's collection schedule at DAVITA LOMA VISTA DIALYSIS's facilities shall be as mutually agreed upon by the parties.

3. In consideration for the service provided herein, DAVITA LOMA VISTA DIALYSIS agrees to conduct a recycling program to encourage recycling at DAVITA LOMA VISTA DIALYSIS's facilities and to donate recyclable materials to the City. As part of this recycling program, employees and others will be encouraged to recycle rather than throw recyclable materials into the City's landfill.

4. DAVITA LOMA VISTA DIALYSIS shall take steps necessary to ensure that only appropriate materials are deposited in the recycling container.

5. This Agreement shall commence upon execution and shall continue until terminated as provided herein.

6. All recyclable materials become the property of the City upon collection by the City. However, should the City Council of the City of El Paso find that the City of El Paso it must discontinue the service provided herein, within ten (10) days after written notice to DAVITA LOMA VISTA DIALYSIS this Agreement shall be terminated with respect to the Equipment.

7. To the extent allowed by law, DAVITA LOMA VISTA DIALYSIS shall indemnify the City of El Paso against all loss or damage to their Equipment during this Agreement period.

8. DAVITA LOMA VISTA DIALYSIS agrees to indemnify, defend and hold harmless the City of El Paso, its officers, agents and employees from and against any and all loss, liability, damage, expense or claim of any nature whatsoever arising out of or incident to this Agreement, which are the result of acts of negligence of DAVITA LOMA VISTA DIALYSIS or DAVITA LOMA VISTA DIALYSIS's agents or employees. DAVITA LOMA VISTA DIALYSIS shall give to the City reasonable notice of any such claims or actions. DAVITA LOMA VISTA DIALYSIS shall use legal counsel reasonably acceptable to the City in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

9. Upon termination of this Agreement, DAVITA LOMA VISTA DIALYSIS shall return Equipment in good condition to the City of El Paso and the Department of Solid Waste Management will arrange for pick up of the Equipment.

10. This Agreement may be terminated in whole or in part by either party upon thirty (30) days written notice to the other party at the following addresses:

CITY: City of El Paso  
Attn: City Clerk  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

copy to: Director  
Department of Solid Waste Management  
7969 San Paulo Drive  
El Paso, Texas 79915

DAVITA LOMA VISTA DIALYSIS  
1382 Lomaland  
El Paso, Texas 79935  
Phone: (915) 591-0834

11. For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.

12. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**


CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

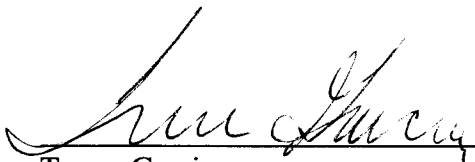
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

DAVITA LOMA VISTA DIALYSIS

  
\_\_\_\_\_  
Name printed: Mark Fluck  
Title: Purchasing Mgr.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Teresa Garcia  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Emma Acosta, Director  
Department of Solid Waste Management